

REAL ESTATE PURCHASE AGREEMENT
848 West McAndrews Road

DATE: MAY 18, 2022

BETWEEN: **Kodiak, LLC,** ("Seller")
An Oregon limited liability company,
744 Cardley Avenue, Suite 100
Medford, Oregon 97504

AND: **City of Medford, Oregon,** ("Purchaser")
An Oregon municipal corporation,
411 West 8th Street
Medford, Oregon 97501

RECITALS

A. Seller is the owner of certain real property located in Jackson County (City of Medford), Oregon, and commonly known as Township 37 South, Range 2 West, Section 24CC, Tax Lots 1500, 1600 and 2000 (collectively, "the subject property"), a more particular description of the subject property is attached hereto as **Exhibit A**. The subject property is approximately 3.69 acres in size and is undeveloped.

B. Seller desires to sell the subject property to Purchaser pursuant to the terms and conditions of this Agreement and Purchaser desires to purchase the subject property from Seller pursuant to the terms and conditions of this Agreement.

AGREEMENT

In consideration of the mutual promises, covenants and undertakings of the parties herein contained, the parties hereby agree as follows:

1. Recitals. The parties acknowledge and agree that the Recitals set forth above are incorporated herein and deemed a material part of this Agreement.

2. Purchase Price. Seller agrees to sell and convey all of Seller's right, title and interest in the subject property to Purchaser and Purchaser agrees to buy the subject property from Seller for the sum of **One Million Five Hundred Ten Thousand and No/100 Dollars (\$1,510,000.00)** ("the Purchase Price"). The Purchase Price shall be paid as follows:

2.1 Earnest Money. Purchaser shall pay to Seller the sum of **Fifty Thousand and No/100 Dollars (\$50,000.00)** as earnest money within five (5) business days of the parties' mutual execution of this Agreement ("the Earnest Money Payment"). The Earnest Money Payment shall be applicable to the Purchase Price. The Earnest Money Payment shall be nonrefundable except

in the event of a breach of the terms of this Agreement by Seller or as otherwise specifically provided herein. The Earnest Money Payment shall be made directly to the Escrow Agent.

2.2 Remaining Balance. The remaining balance of the Purchase Price in the amount of **One Million Four Hundred Sixty Thousand and No/100 Dollars (\$1,460,000.00)** shall be paid in cash at Closing.

3. Title. Seller warrants and represents that Seller is the fee simple owner of the subject property and that it has the right and authority to convey the subject property to Purchaser free and clear of any other claims of title and subject only to encumbrances of record. Seller shall convey title to the subject property by Statutory Warranty Deed, properly executed and notarized conveying title to Purchaser. Seller at Seller's sole expense, shall provide Purchaser with a standard owner's title insurance policy in the amount of the Purchase Price from First American Title Insurance Company, located at 1225 Crater Lake Avenue, Suite 101, Medford, Oregon, 97504 ("the Escrow Agent"). Upon complete execution of this Agreement, Purchaser, at Purchaser's sole expense, shall order a preliminary title report ("Title Report") from the Escrow Agent with copies of the Title Report being delivered to all parties. Purchaser shall have 15 days from the date of Purchaser's receipt of the Title Report to notify Seller in writing of any exceptions unacceptable to Purchaser ("Objection Notice"). Seller shall notify Purchaser of its intent to remove or not to remove the exceptions stated in the Objection Notice within 10 days of Seller's receipt of the Objection Notice. Purchaser shall have no obligation to close on the subject property if the parties are unable to resolve title issues concerning the subject property. Purchaser's failure to issue an Objection Notice within the time allowed will be deemed as Purchaser's acceptance of the exceptions to title set forth in the Title Report for the subject property.

4. Due Diligence Contingency. Purchaser's purchase of the subject property is contingent upon Purchaser's inspection, review and approval of the physical condition of the subject property, including, but not limited to, title matters, the physical and environmental condition of the subject property, an appraisal, governmental regulations affecting the subject property, and all matters that bind the subject property or will affect its use ("the Due Diligence Contingency"). Purchaser shall provide Seller prior written notice of any intended physical testing to be conducted on the subject property. In the event of physical testing conducted on the subject property, Purchaser, at Purchaser's sole expense, shall cause the subject property to be restored to its original condition unless such requirement is waived in writing by Seller. To assist Purchaser in the due diligence process, Seller shall make arrangements to provide Purchaser with all non-confidential information relating to the subject property as soon as practical. Purchaser shall give written notice to Seller no later than 5:00 p.m. on the 45th day following the date of this Agreement ("the Due Diligence Period") of Purchaser's intent to remove or not to remove the Due Diligence Contingency. In the event no written notice is given to Seller within the time allowed, the Due Diligence Contingency shall be deemed waived. In the event the Due Diligence Contingency is not met for any reason on the part of Purchaser and Purchaser complies with the notice requirements set forth in this Section, Seller shall promptly refund the Earnest Money Payment to Purchaser.

5. Conditions of Access. Seller grants Purchaser access onto the subject property for the limited purpose of allowing Purchaser to conduct inspections and prepare plans for the future

development of the subject property. In consideration for Seller providing Purchaser such access to the subject property, Purchaser hereby agrees to indemnify and hold Seller harmless, including the reasonable cost of Seller's legal defense, from any claim for personal injury, property damage or any other action by Purchaser or Purchaser's contractors, agents and representatives relating to any activities on the subject property by Purchaser, Purchaser's contractors, agents or representatives.

6. **As Is.** Except as otherwise stated herein, the parties hereby acknowledge and agree that this is an "AS IS" transaction and Seller makes no representations or warranties as to the condition of the subject property, any improvements thereon, if any, or their fitness for a particular purpose.

7. **Due Performance.** Due performance of the terms, conditions, and agreements of this Agreement to be performed by a party and the accuracy of the representations and warranties of each as of the Closing Date is a condition to closing by the other party. Such performance shall include, without limitation, execution, and delivery in proper form of all of the documents required hereunder to be delivered on the Closing Date and the rendering of all other performances and undertakings contemplated hereunder.

8. **Closing.** Closing shall occur on or before 15 days following the expiration of the Due Diligence Contingency Period ("Closing Date") at the offices of the Escrow Agent.

9. **Closing Provisions.**

9.1 **Closing.** This purchase and sale transaction shall be closed on or before the Closing Date, unless otherwise extended pursuant to mutual agreement of the parties, at the offices of the Escrow Agent.

9.2 **Funds and Documents.**

9.2.1 **Purchaser's Funds and Documents.** On or before the Closing Date, Purchaser shall cause to be delivered to the Escrow Agent on the Closing Date, each of the following:

(a) The sums specified in Section 2 herein, which sums are payable in cash, by certified or cashier's check, wire transfer, or otherwise immediately available federal funds.

(b) All funds required of Purchaser by reason of the prorations and adjustments described herein and the obligations of Purchaser for costs and expenses as set forth herein.

(c) All documents required pursuant to this Agreement, properly executed by Purchaser.

9.2.2 **Seller Funds and Documents.** On or before the Closing Date, Seller shall cause to be delivered to the Escrow Agent on the Closing Date, each of the following:

(a) Any funds necessary to satisfy Seller's obligations arising from the prorations and adjustments described herein and for costs and expenses as set forth herein, if any.

(b) All documents required pursuant to this Agreement, properly executed by Seller.

9.3 Adjustments and Prorations on Closing. Seller and Purchaser understand that certain items will need to be prorated among the parties at Closing including, but not limited to real property taxes. Real estate taxes payable for the current year shall be prorated on the Closing Date between the Seller and the Purchaser.

9.4 Costs of Closing.

9.4.1 Seller's Costs and Expenses. At Closing, Seller shall pay (i) one-half (1/2) of the Escrow Agent's fee; (ii) the premium for an Owner's standard title insurance policy in the amount of the Purchase Price; and (iii) all recording and miscellaneous charges customarily attributable to a Seller in similar transactions.

9.4.2 Purchaser's Costs and Expenses. At Closing, Purchaser shall pay (i) one-half (1/2) of the Escrow Agent's Fee; (ii) any premium for additional title insurance endorsements desired by Purchaser over and above those provided by a standard title insurance policy (iii) all recording and miscellaneous charges customarily attributable to purchasers in similar transactions; and (iv) all attorneys' fees incurred by Purchaser with respect to negotiating this Agreement, if any.

10. Remedies.

10.1 Seller's Breach. If Seller breaches this Agreement or fails to close the sale contemplated hereby through no fault of Purchaser, Purchaser shall be entitled to a refund of the Earnest Money Payment or DAMAGES, SPECIFIC PERFORMANCE OR OTHER INJUNCTIVE OR EQUITABLE RELIEF.

10.2 Purchaser's Breach. If Purchaser breaches this Agreement and fails to close the sale contemplated hereby through no fault of Seller, Seller shall be entitled to retention of the Earnest Money Payment.

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11. Council Approval. The parties acknowledge and agree that this Agreement is subject to approval by the City of Medford City Council ("Council Approval"), which shall be sought by Purchaser within 30th days of the parties' mutual execution of this Agreement. In the event this Agreement does not receive Council Approval during the Due Diligence Contingency Period, this Agreement shall terminate and be of no further force or effect. In such event, Seller shall promptly refund the Earnest Money Payment to Purchaser.

12. Brokerage Fees. No real estate brokerage fee or commission is owing in conjunction with this transaction.

13. Property Line Adjustment(s). The parties acknowledge and agree that Purchaser may desire to pursue certain property line adjustment(s) of the internal parcel boundaries within the subject property. Seller shall consent to such proposed property line adjustment(s) provided Seller reasonably determines that any proposed reconfiguration of the internal boundary lines will not adversely affect the market value of the subject property.

14. Miscellaneous Provisions.

14.1 Conflict of Interests. No member, official or employee of the City of Medford shall make any decision relating to the Agreement which affects the member's, official's, or employee's personal interests or the interests of any corporation, partnership, or association in which member, official, or employee is directly or indirectly interested.

14.2 No Partnership. Nothing contained in this Agreement, or any acts of the parties hereby shall be deemed or construed by the parties, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture, or any association between any of the parties.

14.3 Notices. Notices under this Agreement shall be in writing and shall be effective when actually delivered by hand delivery, electronic correspondence or United States mail directed to the other party at the address set forth below, or to such other address as the party may indicate by written notice to the other:

Purchaser:
City of Medford
c/o Harry Weiss
Executive Director
Medford Urban Renewal Agency
411 West 8th Street
Medford, Oregon 97501
harry.weiss@cityofmedford.org

and

Eric Mitton
City Attorney
411 West 8th Street
Medford, Oregon 97501
eric.mitton@cityofmedford.org

Seller:
Kodiak, LLC
c/o Jack Galpin
744 Cardley Avenue, Suite 100
Medford, Oregon 97504
jack@galpinllc.com

and

Daniel O'Connor
O'Connor Law, LLC
670 G Street, Suite B
Jacksonville, Oregon 97530
dano@oconnorlawgroup.net

14.4 Amendment. This Agreement may be amended only by written instrument executed by the parties.

14.5 Representations and Warranties. All representations and warranties made herein shall survive Closing.

14.6 Entire Understanding. This Agreement, and the documents incorporated herein, consists of the entire Agreement between the parties with relation to the conveyance of the Tracts.

14.7 Time of Essence. Time is of the essence of this Agreement.

14.8 Applicable law. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon. Any action or suit to enforce or construe any provision of this Agreement by any party shall be brought in the Circuit Court of the State of Oregon for Jackson County.

14.9 Counterparts. This Agreement may be executed by the parties in separate counterparts, which together shall constitute one instrument. For the purposes of this Agreement, a facsimile or electronic copy of a signature shall have the same force and effect as an original signature.

14.10 Statutory Disclaimer.

THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS THAT, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND THAT LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE

APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO VERIFY THE EXISTENCE OF FIRE PROTECTION FOR STRUCTURES AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

14.11 1031 Exchange. Purchaser and Seller acknowledge and agree that the purchase and sale of the subject property may be part of a tax-free exchange for Seller pursuant to Section 1031 of the Internal Revenue Code. Seller hereby agrees to cooperate with Seller and take all reasonable steps on or before the Closing Date to facilitate such exchange if requested by Seller, provided that: (a) no party making such accommodation shall be required to acquire any substitute property; (b) such exchange shall not affect the representations, warranties, liabilities and obligations of the parties to each other under this Agreement; (c) no party making such accommodation shall incur any additional cost, expense or liability in connection with such exchange; and (d) no dates in this Agreement will be extended as a result thereof.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates set forth below.

CITY OF MEDFORD:

Date: May 18, 2022

Ryan Martin
By: Ryan Martin
Its: Acting City Manager

KODIAK, LLC:

Date: May 9, 2022

C.A. Galpin
By: C.A. Galpin
Its: Manager

EXHIBIT A

Tax Lot 1500:

Commencing at the southeast corner of Donation Land Claim No. 88; in Township 37 South of Range 2 West of the Willamette Meridian in Jackson County, Oregon; thence West 6.59 chains; thence North 42° East 442.5 feet to the true point of beginning; thence North 42° East 19.5 feet; thence North 1° East 712.8 feet; thence West 196.0 feet; thence South 220.0 feet; thence East 102.0 feet; thence South 1° West 506.8 feet, more or less, to the place of beginning.

Tax Lot 1600:

Beginning at the Southeast corner of Donation Land Claim No. 88 in Township 37 South, Range 2 West of the Willamette Meridian, Jackson County, Oregon; and running thence West, 6.59 chains; thence North 42° East, 316.00 feet to the true point of beginning; thence North 42° East, 126.50 feet; thence North 1° East, 506.80 feet; thence West, 182.00 feet; thence South, 306.00 feet; and thence in a Southerly direction, 338.00 feet, more or less, to the true point of beginning and being known as Lot 3 of MAPLE PARK, unrecorded.

Tax Lot 2000:

Commencing at the Southeast corner of Donation Land Claim No. 88 in Township 37 South, Range 2 West, of the Willamette Meridian, Jackson County, Oregon; thence West, along the South line of said Claim, 6.59 chains; thence North 42° East, along the center of County Road, 316.00 feet to the true point of beginning; thence South 42° West, along the center of County Road, 27.00 feet; thence West, 177.00 feet to center of County Road; thence North, along center of County Road, 177.00 feet; thence East to the Westerly line of tract described in Volume 194, Page 639, Jackson county, Oregon, Deed Records; thence Southeasterly along said westerly line, to the true point of beginning.

EXCEPTING THEREFROM any portion lying within the following described tract: Beginning at a point which bears 392.19 feet North and 50.00 feet East from the centerline intersection of McAndrews Road and West Jackson Street in the City of Medford, Jackson County, Oregon; thence East 112.55 feet to a 5/8 inch iron pin (being the West line of tract described in Volume 194, Page 639, Jackson county, Oregon, Deed Records); thence South 17° 00' 30" East, along said West line, 33.25 feet; thence North 76° 51' 45" West, 125.56 feet; thence North 3.25 feet to the point of beginning, being in Section 24 in Township 37 South, Range 2 West of the Willamette Meridian, Jackson County, Oregon.